

BERNALILLO COUNTY
BOARD OF COUNTY COMMISSIONERS

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 46 OF THE BERNALILLO COUNTY CODE, IMPACT FEES; REVISING DEFINITIONS AND LANGUAGE REGARDING THE UPDATED IMPACT FEE CAPITAL IMPROVEMENT PLANS; ADDRESSING THE IMPACT FEE MULTIPLIER; REVISING AFFORDABLE HOUSING WAIVERS AND THEIR QUALIFYING AMOUNT; MODIFYING LANGUAGE AS TO COLLECTION OF FIRE/EMS IMPACT FEES ON WAIVERS; AND ADDING AN ASSESSMENT OF OPEN SPACE IMPACT FEES IN THE EAST MOUNTAIN AREA.

Sec. 46-1. Intent and purpose of chapter.

This chapter is intended to assess and collect impact fees in an amount based upon appropriate service units for park, open space, fire/EMS, roadway and drainage facilities in order to finance such facilities, the demand for which is generated by new development in the County. The purpose of this chapter is to ensure the provision of an adequate level of service for park, open space, fire/EMS, roadway and drainage facilities throughout the County so that new development may occur in a manner consistent with the City and County comprehensive plan. The Board of County Commissioners intends, by enactment of this chapter, to require new development to bear an amount not to exceed its proportionate share of the costs related to the additional park, open space, fire/EMS, roadway and drainage facilities that are rationally related to such new development in accordance with applicable law. The County is responsible for and will meet all capital improvement needs associated with existing development in the County as established by the level of service adopted in this chapter. Only capital improvement needs that are rationally related to new development in accordance with applicable law will be paid by impact fees. Impact fees shall not exceed the cost to pay for a proportionate share of the cost of system improvements based upon service units needed to serve new development. Subject to the provisions of this chapter and the Development Fees Act (NMSA 1978, § 5-8-1 et seq.), nonrecoupment impact fees shall be spent on new or enlarged capital facilities and equipment which benefit those developments which pay the fees. Recoupment impact fees may be spent to offset the impact fees otherwise due from new development for which a waiver of impact fees has been granted or for any other lawful County purpose. Impact fees may also be spent on:

- (1) The estimated costs and professional fees paid for preparing and updating the IFCIP;
- (2) For costs and fees charged by qualified professionals who are not employees of the County for services directly related to the construction of capital improvements or facility expansions; and
- (3) For administrative costs associated with this chapter for County employees who are qualified professionals. Such administrative costs shall not exceed three percent of the total impact fees collected, as provided by NMSA 1978, § 5-8-4.

(Ord. No. 95-16, § XI-1-1(E), 12-5-95)

Sec. 46-2. Definitions.

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The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Advisory committee means the standing committee required to be appointed under the Development Fees Act (NMSA 1978, § 5-8-1 et seq.).

Affordable housing means any [new](#) housing unit that will be sold for less than \$[130,000](#).

AMAFCA means the Albuquerque Metropolitan Arroyo Flood Control Agency.

Applicant means a person, including any governmental entities, seeking subdivision or development approval, a building permit, a refund, a waiver or a credit, whichever is applicable.

Assessment means the determination of the amount of the impact fee. (See also *Collection*.)

Board of adjustment means the County Planning Commission serving in its capacity as the Board of Adjustment.

Building permit means the building permit required by the Uniform Building Code, as adopted by the County.

Capital improvements means any of the following facilities that have a life expectancy of ten or more years and are owned and operated by or on behalf of the County:

- (1) Parks, recreational areas, open space trails and related areas and facilities;
- (2) Buildings for fire protection and/or emergency medical services, and essential equipment costing \$10,000.00 or more and having a life expectancy of ten years or more;
- (3) Roadway facilities which are arterial or collector streets. [All Bernalillo County roads which meet these criteria comprise the impact fee roadway system and can be considered for IFCIP projects.](#) In order to qualify for impact fee credits, capital improvements for roads must be identified in the Impact Fees CIP, and the improvements must provide new capacity for development except as provided for below. If an improvement is made to a facility on the system that is not identified in the IFCIP, credits will be issued in proportion to the additional capacity provided (in service units). Also bridges that are not classified as drainage facilities in the IFCIP, bike and pedestrian trails, bus bays, rights-of-way, traffic signals, landscaping and any local components of state or federal highways; and
- (4) Drainage facilities which include any facility that would collect, divert or convey a peak discharge of more than 50 cubic feet per second (cfs) or store more than two acre-feet of runoff in the event of a 100-year design storm, including bridges, culverts and other structures associated with road crossings of arroyos and other major drainage facilities that are not classified as roadway facilities in the IFCIP.

CIP table of facility unit costs means the table listing land, facility and/or component unit costs in the applicable category of the impact fees capital improvements plan.

Collection means the payment of the applicable impact fees. (See also *Assessment*.)

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Commercial means a facility or activity permitted as a permissive or conditional use in accordance with the provisions of the County zoning ordinance for a C-1 or C-2 zone.

Comprehensive plan means the City/County comprehensive plan, adopted August 1988, as may be subsequently amended.

Credit means credit for the value of the construction, contribution or dedication of system improvements or the contribution of money for system improvements accepted by the County.

Credit-holder means the person entitled to transfer, apply or seek reimbursement for excess credits.

Deemed complete means that an applicant has submitted an application and requisite fees for a building permit and the County has accepted such application and fees.

Developer means any person, corporation, organization or other legal entity constructing or creating new development.

Development means the division of land, reconstruction, redevelopment, conversion, structural alteration, relocation or enlargement of any structure; or any use, change of use or extension of the use of land, any of which increases the number of service units.

Development approval means written authorization, such as approval of a subdivision application or issuance of a building permit, or other forms of official action required by the County prior to commencement of construction.

Development site means the property under consideration for development at the time of application for a building permit.

Drainage facility means any facility that would collect, divert or convey a peak discharge of more than 50 cubic feet per second (cfs) or store more than two acre-feet of runoff in the event of a 100-year design storm, including bridges, culverts and other structures associated with road crossings of arroyos and other major drainage facilities that are not classified as roadway facilities in the IFCIP.

Dwelling unit (du) means one or more connected rooms and a single kitchen designed for occupancy by no more than one family for living and sleeping purposes, permanently installed on a permanent foundation which has received a permit from the County and is either:

- (1) Constructed to the standards of the County Building Code and other technical codes adopted as of the date of the unit's construction;
- (2) A single-family detached dwelling with a heated area at least 36 by 24 feet and 864 square feet, constructed in a factory to the standards of the U.S. Department of Housing and Urban Development, National Manufactured Housing Construction and Safety Standards Act of 1974, 42 USC 5401 et seq., HUD Zone Code II, as amended to the date of the unit's construction, and installed consistent with the Manufactured Housing Act (NMSA 1978, § 60-14-1 et seq.), regulation section 1007, ground level installation, and regulation section 1009, ground anchors, as amended to the date of the unit's

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installation. Such dwelling shall be consistent with applicable historic or aesthetic standards which may be adopted by County ordinance; or

(3) A mobile home.

Economic base development means a business that has a positive economic and fiscal impact on the County and creates employment in Bernalillo County as recognized by the County Manager or his designee and approved by the Board of County Commissioners.

Economic Base Development Waiver means a business that is exempt from paying impact fees, excluding fire/EMS impact fees.

Effective date means the date on which Ord. No. 95-16 became effective, being January 1, 1996.

Encumbered means impact fee funds committed for a specified capital improvement on a specified time schedule which does not exceed seven years from the date of payment of the impact fees.

Excess credits means that portion of the credit granted for system improvements which exceeds the value of the impact fees otherwise due from the development.

Facility expansion means the expansion of the capacity of an existing facility (in service units) that serves the same function as an otherwise necessary new capital improvement, in order that the existing facility may serve new development. The term does not include the repair, maintenance, modernization or expansion of an existing facility to improve service to existing development.

Facility units means the quantity of service units provided by a facility or component and measured in terms of the units listed in the applicable CIP table of facility unit costs.

Fire and/or EMS facilities means buildings for fire protection and/or emergency medical services, and essential equipment costing \$10,000.00 or more and having a life expectancy of ten years or more.

First in, first out means expenditures of impact fee revenues reflect the chronological order in which the impact fee revenues were collected.

Functional population means the effective population of the County, including residents and nonresidents, during a given period of time, as used in the calculation of the impact fees and as described in the fire/EMS impact fee capital improvements plan.

Gross floor area means the sum of all the floor areas of a building, measured from the exterior of outer supporting walls, including all accessory buildings on the same lot.

Impact fee means a charge or assessment imposed by the County on new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions rationally related to new development in accordance with applicable law. The term includes amortized charges, lump-sum charges, capital recovery fees, contributions in aid of construction, development fees and any other fee that functions as described by this definition. The term does not include hookup fees, dedication of rights-of-way or easements or construction or dedication of on-site water distribution, wastewater collection or drainage facilities, or streets, sidewalks or curbs if the dedication or construction

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is required by a previously adopted valid ordinance or regulation and is rationally related to new development in accordance with applicable law.

Impact fees administrator means the County manager or his designee.

Impact fees capital improvements plan (IFCIP) means a plan required by the Development Fees Act (NMSA 1978, § 5-8-1 et seq.) that identifies types of capital improvements or facility expansions for which impact fees may be assessed. The IFCIP is to be distinguished from the local infrastructure capital improvements plan which sets forth an inventory of existing capital improvements deficiencies, planned capital projects and sources of funding for these projects which sources may or may not include impact fees. The IFCIP consists of separate capital improvement plans for parks, open space, fire/EMS, roadways and drainage facilities.

Impact Fee Multiplier means a percentage multiplier set by the Board of County Commissioners at which impact fees will be collected or credits granted to encourage economic development.

Impact Fee Roadway System means the facilities classified as [arterial and collector roads on the Mid Region Council of Governments Regional Roadway Classification Map or Long-Range Roadway System Map. All Bernalillo County roads which meet these criteria comprise the impact fee roadway system and can be considered for IFCIP projects.](#)

Independent fee determination means a finding by the impact fees administrator that an independent fee study does or does not meet the requirements for such a study as established by this chapter and, if the requirements are met, the fee calculated by the impact fees administrator there from.

Independent fee study means the engineering, financial and/or economic documentation prepared by an applicant in accordance with section 46-18 to allow an individual determination of an impact fee other than by use of the applicable fee schedule.

Industrial means a facility or activity permitted as a permissive or conditional use in accordance with the provisions of the County zoning ordinance for an M-1 or M-2 zone.

Land use means the primary category of use for any principal or accessory building, structure or use located on a development site.

Land use assumptions means the land use assumptions adopted or as may be amended by the Board of County Commissioners, pursuant to the Development Fees Act (NMSA 1978, § 5-8-1 et seq.).

Lane Miles of Capacity (LMC) means the product of the number of primary trips generated by a specific land use during the PM peak hour and the average trip length of each of these trips (VMT), divided by the per-lane capacity. Capacities are computed by level of service, and the level of Service for the IF ordinance has been established at D, ie, Lane Miles of Capacity at Level of Service D.

Level of service (LOS) means a standardized measure of capacity provided by a system of public facilities. The LOS for park facilities is expressed in terms of the ratio of park capital costs to population in each service area. The LOS for open space is expressed in terms of the ratio of acres of open space per 1,000 population. The LOS for fire protection and EMS facilities is expressed in terms of the ratio of

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square feet of fire protection and EMS facilities per functional population. The LOS for roadways is expressed in terms of vehicle-miles of travel (VMT) to vehicle-miles of capacity (VMC). The LOS for drainage is expressed in terms of protection from a 100-year design flood.

Local street means all streets not designated [as arterial or collector roads on the Mid Region Council of Governments Regional Roadway Classification Map or Long-Range Roadway System Map.](#)

Long Range Roadway System Map (LRRSM) (for the Albuquerque Urban Area) means the current version of the document adopted by the [Metropolitan Transportation Board of the Mid-Region Council of Governments.](#)

Mobile home means a movable or portable housing structure larger than 40 feet in body length, eight feet in width, or 11 feet in overall height, designed for occupancy by no more than one family for living and sleeping purposes. It does not include structures constructed to the standards of the building code and other technical codes adopted as of the date of the unit's construction.

New development means the division of land; reconstruction, redevelopment, conversion, structural alteration, relocation or enlargement of any structure; or any use, change of use or extension of the use of land; any of which increases the number of service units.

Nonrecoupment impact fees means impact fees imposed to generate revenue that is used to construct new or enlarged capital improvements and equipment which benefit those developments within the service area which pay the fees.

Office has the same meaning as used in the County zoning ordinance.

Offset means the amount by which an impact fee is reduced to fairly reflect the credits applied for system improvements.

Owner of record means the persons having legal and equitable title to the property as recorded in the real property records of the County.

Postordinance credit means credit for the construction, contribution or dedication of system improvements or the contribution of money for system improvements accepted by the County from and after January 1, 1996.

Preordinance credit means credit for the construction, contribution or dedication of system improvements or the contribution of money for system improvements accepted by the County on or after January 1, 1980, and prior to January 1, 1996.

Primary trips means trips made for the specific purpose of visiting the generator as defined in [the current edition of Trip Generation](#), published by the Institute of Transportation Engineers.

Project improvements means site specific improvements or facilities that are planned, designed or built to provide service for a specific development project and that are necessary for the use and convenience of the occupants or users of that project, and that do not provide additional service units as defined for each impact fee category. The addition of service units shall control a determination of whether an improvement or facility is a project improvement or a system improvement, and the physical location of the improvement or facility, on-site or off-site, shall not be considered determinative of whether it is a project improvement or a system improvement. No improvement or facility specifically identified in the

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1 IFCIP shall be considered a project improvement. If an improvement or facility provides or will provide
2 new service units the improvement or facility shall not be considered a project improvement.

3
4 **Proportionate share** means that portion of the cost of system improvements which is reasonably and
5 fairly related to the service demands and needs of new development.

6
7 **Qualified professional** means a professional engineer, surveyor, financial analyst or planner providing
8 services within the scope of his license, education or experience.

9
10 **Recoupment impact fees** means impact fees imposed by the County to reimburse the County for excess
11 capacity of capital improvements available to serve new development.

12
13 **Refund** means reimbursement of impact fees to the owner of record of property for which impact fees
14 have been paid.

15
16 **Service areas** means geographically defined areas of the County that have been designated in the IFCIP
17 in which development potential may create the need for capital improvements to be funded by impact
18 fees.

19
20 **Service areas map** means a map of service areas in which impact fees are imposed. A map illustrating
21 the service area for each of the categories of capital improvements covered by this chapter is attached to
22 Ord. No. 95-16 as appendix A and incorporated by reference.

23
24 **Service unit** means a standardized measure of consumption, use, generation or discharge attributable to
25 an individual unit of development calculated in accordance with generally accepted engineering or
26 planning standards for a particular category of capital improvements or facility expansions. The applicable
27 service unit for each of the categories of capital improvements covered by this chapter is described in the
28 IFCIP.

29
30 **Single-family** means a building arranged or designed to be occupied by one family, including mobile
31 homes, the structure having only one dwelling unit.

32
33 **System improvements** means the addition or provision of new service units as defined for each impact
34 fee category.

35
36 **System improvements costs** means costs incurred to provide system improvements needed to serve
37 new development including, but not limited to, the costs of system capacity and/or system impact studies,
38 planning, design and construction, land acquisition, land improvement, design and engineering related
39 thereto, including the cost of constructing or reconstructing system improvements or facility expansions
40 including, but not limited to, the construction contract price, surveying and engineering fees, related land
41 acquisition costs and expenses incurred for qualified staff or any qualified engineer, planner, architect,
42 landscape architect, or financial consultant for preparing or updating the capital improvements program
43 and administrative costs not to exceed three percent of the total amount of the impact fees collected.
44 Projected interest charges and other finance costs may be included if the development impact fees are to
45 be used for the payment of principal and interest on bonds, notes, or other financial obligations issued by
46 or on behalf of the County to finance system improvements, but such costs do not include routine and
47 periodic maintenance expenditures, personnel training and other operating costs.
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System studies means any study, analysis or report, or portion thereof, required by the County to determine the system improvements for new development.

Vehicle-miles of capacity (VMC) means the product of the capacity of the roadway for a given period of time and the length of the roadway. The capacity supplied by a road improvement is determined by multiplying the capacity of the new or widened roadway by the length of the road improvement.

Vehicle-miles of travel (VMT) means the product of the number of primary trips generated by a specific land use during a given period of time and the average trip length of each of these trips.

Waived means to relinquish or abandon a claim or right.

Waiver means the relinquishing of the County's right to impose all or a portion of impact fees on specified new development that qualifies for such a waiver under the terms and conditions of this chapter.

(Ord. No. 95-16, § XI-1-1(G), 12-5-95; Ord. No. 97-14, 10-8-97)

Cross reference(s)--Definitions generally, § 1-2.

State law reference(s)--Similar provisions, NMSA 1978, § 5-8-2.

Sec. 46-3. Authority of Chapter.

The County is authorized to impose impact fees under the Development Fees Act (NMSA 1978, § 5-8-1 et seq.). The provisions of this chapter shall not be construed to limit the power of the County to utilize any other methods or powers otherwise available for accomplishing the purposes set forth in this chapter, either in substitution or in conjunction with this chapter, provided that such methods or powers are not inconsistent with or prohibited by this chapter or the Development Fees Act.

(Ord. No. 95-16, § XI-1-1(B), 12-5-95)

State law reference(s)--Development fees authorized, NMSA 1978, § 5-8-3.

Sec. 46-4. Applicability of Chapter.

This chapter shall be applicable to all development that occurs within the unincorporated jurisdiction of the County, and outside of any incorporated municipalities, as may be amended in the future, and shall apply uniformly within each service area.

(Ord. No. 95-16, § XI-1-1(C), 12-5-95)

Sec. 46-5. Penalty for violation of chapter.

The County shall have the power to sue in law or equity for relief in civil court to enforce this chapter including, but not limited to, injunctive relief to enjoin and restrain any person from violating the provisions of this chapter and to recover such damages as may be incurred by the implementation of specific corrective actions. Knowingly furnishing false information to the County on any matter relating to the

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administration of this chapter shall constitute an actionable violation. The impact fees administrator may revoke or withhold the issuance of any building permit or other development permits if the provisions of this chapter have been violated by the owner or his assigns. Subject to applicable law, the County shall have the right to inspect the lands affected by this chapter and shall have the right to issue cease and desist orders, stop work orders and other appropriate citations for violations.

(Ord. No. 95-16, § XI-1-1(W), 12-5-95)

Sec. 46-6. Enforcement of chapter.

The enforcement of this chapter will be the responsibility of the impact fees administrator and such County personnel as he may designate from time to time.

(Ord. No. 95-16, § XI-1-1(X), 12-5-95)

Sec. 46-7. Findings and declarations.

The Board of County Commissioners hereby finds and declares that:

- (1) The County is committed to the provision of park, open space, fire/EMS, roadway and drainage facilities necessary to cure any deficiencies that may exist in already developed areas of the County.
- (2) Such facilities shall be provided by the County utilizing existing funding sources allocated for such facilities, other than impact fees including, but not limited to, the general fund, general obligation bonds, special assessment districts and metropolitan redevelopment districts.
- (3) New development causes and imposes increased demands on public facilities, including park, open space, fire/EMS, roadway and drainage facilities.
- (4) The Board of County Commissioners appointed an advisory committee, pursuant to NMSA 1978, § 5-8-37, to review land use assumptions (LUA), the impact fees capital improvements plan (IFCIP), and this chapter. The advisory committee reviewed and recommended approval of the LUA and the IFCIP.
- (5) The land use assumptions, incorporated in this chapter by reference, indicate that new development will continue and will place increasing demands on the County to provide park, open space, fire/EMS, roadway and drainage facilities.
- (6) New development should pay an amount not to exceed its proportionate share of the capital costs related to the additional park, open space, fire/EMS, roadway and drainage facilities needed to accommodate that new development.
- (7) The Board of County Commissioners hereby adopts the following standards for a minimum level of service (LOS) for each of the following categories of capital facilities:

Facility

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Type Level of Service*

Parks \$275.00 total facilities per person

Open space 14.8 acres per 1,000 population

Fire/EMS 1.68 square feet per functional population

County- maintained roadways level of service (LOS)D

Drainage Flood protection in 100-year design storm

For details refer to the appropriate impact fees capital improvements plan

(8) The Board of County Commissioners, after careful consideration of the matter, hereby finds and declares that it is in the best interest of the general welfare of the County and its residents to impose impact fees upon new development in order to finance park, open space, fire/EMS, roadway and drainage facilities in the designated service areas for which demand is created by the new development.

(9) The Board of County Commissioners further finds and declares that impact fees provide a reasonable method of regulating new development to ensure that such new development pays a portion of the costs of park, open space, fire/EMS, roadway and drainage facilities that are rationally related to the new development in accordance with applicable law.

(10) The Board of County Commissioners further finds and declares that such impact fees are equitable, and impose a fair burden on new development by requiring that new development pay a portion of the cost, and deems it advisable to adopt this chapter as set forth.

(11) The Board of County Commissioners further finds that there exists a rational relationship between the capital costs of providing park, open space, fire/EMS, roadway and drainage facilities at the level of service adopted and the impact fees imposed on development under this chapter.

(12) The Board of County Commissioners further finds that there exists a rational relationship between the impact fees to be collected pursuant to this chapter and the expenditure of those funds on capital costs related to park, open space, fire/EMS, roadway and drainage facilities as limited and restricted by this chapter.

(13) The Board of County Commissioners further finds and declares that this chapter is consistent with both the procedural and substantive requirements of the Development Fees Act (NMSA 1978, § 5-8-1 et seq.)

(14) The Board of County Commissioners further finds a need to establish [a temporary](#) impact fee multiplier as described to encourage economic development. The Board of County Commissioners with adoption of this ordinance establishes a multiplier [_](#) to the calculated impact fees. [Refer to Sec 46-13.](#)

(Ord. No. 95-16, § XI-1-1(D), 12-5-95

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Sec. 46-8. Land Use Assumptions.

The land use assumptions provide a projection of changes in land uses, densities, intensities and population within planning information areas over at least a five-year period. The Board of County Commissioners hereby adopts and incorporates by reference the land use assumptions developed by the advisory committee and approved by the Board of County Commissioners. The land use assumptions shall be reviewed and updated, if necessary, in conjunction with the update of the IFCIP.

(Ord. No. 95-16, § XI-1-1(H), 12-5-95)

State law reference(s)--Land use assumptions, NMSA 1978, § 5-8-19 et seq.

Sec. 46-9. Impact fees capital improvements plan.

1. The impact fees capital improvements plan (IFCIP) identifies types of capital improvements or facility expansions for which impact fees may be assessed. The IFCIP is to be distinguished from the local infrastructure capital improvements plan which sets forth an inventory of existing capital improvements deficiencies, planned capital projects and sources of funding for these projects which sources may or may not include impact fees. The IFCIP consists of separate capital improvements plans for parks, open space, fire/EMS, roadways and drainage facilities.
2. The Board of County Commissioners hereby adopts by reference the impact fees capital improvements plan approved by the Board of County Commissioners at the same hearing at which this chapter is adopted, particularly as it relates to the allocation of a fair share of the costs of new facilities for parks, open space, fire/EMS, roadway and drainage facilities to be borne by new users of such facilities and the levels of service to be provided to the citizens of the County for these facilities.
3. The phasing and location of park facilities identified in the IFCIP and constructed with park impact fee revenue within each service area will be completed in accordance with the County parks and recreation master plan.
4. The IFCIP shall be updated at least every five years from December 5, 1995, in conjunction with updates of the land use assumptions. Appropriate revisions and amendments to the impact fees schedules and this chapter shall be made following such updates, if necessary.

(Ord. No. 95-16, § XI-1-1(I), 12-5-95)

State law reference(s)--Capital improvements plan, NMSA 1978, § 5-8-22 et seq

Sec. 46-10. Advisory committee.

The advisory committee is a standing committee established pursuant to Resolution AR 148-94. The advisory committee shall meet at the direction of the Board of County Commissioners, or the committee itself. The functions of the advisory committee shall include:

- (1) Advise and assist the County in adopting land use assumptions;

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- 1 (2) Review the IFCIP and file written comments;
- 2
- 3 (3) Monitor and evaluate implementation of the IFCIP;
- 4
- 5 (4) File annual written reports with respect to the progress of the IFCIP and report to the County any
- 6 perceived inequities in implementing the plan or imposing the impact fees;
- 7
- 8 (5) Advise the County of the need to update or revise the land use assumptions, IFCIP and impact fees;
- 9 and
- 10
- 11 (6) Any other tasks the Board of County Commissioners may direct the advisory committee to perform.
- 12

13 (Ord. No. 95-16, § XI-1-1(J), 12-5-95)

14
15 **Cross reference(s)**--Boards and commissions, § 2-431 et seq.

16
17 **State law reference(s)**--Advisory committee, NMSA 1978, § 5-8-37.

18
19 **Sec. 46-11. Establishment of service areas.**

20 Service areas for each of the categories of impact fees are established as follows:

- 21
- 22 (1) *Parks service areas*. Five service areas are established within the County boundaries and outside the
- 23 incorporated limits of any municipality as follows:
- 24
- 25 (a) The East Mountain Service Area consists of the territory bounded on the west side by the
- 26 township line located between ranges 4 and 5 and by the County line on the north, east, and
- 27 south side.
- 28
- 29
- 30 (b) The Northeast Service Area consists of the territory bounded by I-40 on the south, the township
- 31 line between ranges 4 and 5 on the east, I-25 on the west and the County line on the north.
- 32
- 33
- 34 (c) The Northwest Service Area consists of the territory bounded by I-25 on the east, the County line
- 35 on the north and west, and I-40 on the south, excluding Quail Ranch. (Formally Black Ranch)
- 36
- 37 (d) The South Service Area consists of the territory bounded by I-40 on the north, the township line
- 38 between ranges 4 and 5 on the east, and the County line on the south and west.
- 39
- 40
- 41 (2) Open space service area. One service area is established consisting of that area within the County
- 42 boundaries, outside the incorporated limits of any municipality .
- 43
- 44 (3) Fire/EMS service area. One Countywide service area is established within the County boundaries
- 45 and outside the incorporated limits of any municipality.
- 46
- 47 (4) Roadway service areas.
- 48

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(a) *Countywide service area.* One service area is established consisting of the area within the County boundaries and outside the incorporated limits of any municipality. The Countywide service area includes facilities classified as principal arterials, minor arterials and collectors on the LRRSM and the following roadways in the east mountain area: All State Roads and the following facilities in the MRCOG modeling network.

(5) *Drainage service areas.* Five service areas based on major watershed boundaries and hydrologic characteristics are established within the County boundaries outside the incorporated limits of any municipality as more particularly shown on the map of the drainage service areas. The general external boundaries of the five service areas, the interior portions of some of which are within municipal limits, are as follows:

a. The East Mesa Service Area is bounded on the north by the Sandia Pueblo, on the east generally by the forest service/City boundary, on the south generally by the Tijeras Arroyo and on the west by the North and South Diversion Channel.

b. The Valley Service Area is bounded on the north by the Sandia Pueblo, on the east by the North and South Diversion Channels (north of the Tijeras Arroyo) and on the east by I-25 (south of the Tijeras Arroyo), on the south by the Isleta Pueblo, and on the west by Coors Boulevard and Corrales Road.

c. The Mesa del Sol Service Area is bounded on the north by the Tijeras Arroyo, on the east by Kirtland Air Force Base, on the south by the Isleta Pueblo and on the west by I-25.

d. The Southwest Mesa Service Area is bounded on the north by I-40, on the east by Coors Boulevard, on the south by the Isleta Pueblo and on the west by the Rio Puerco divide.

e. The Northwest Mesa Service Area is bounded on the north by the Sandoval County line, on the east by Coors Boulevard and Corrales Road, on the south by I-40 and on the west by the Rio Puerco divide. The Northwest Mesa Service Area is further divided into basalt areas and nonbasalt areas.

(6) *Excluded areas.* Areas within any incorporated municipality are specifically excluded from all of these service areas. In the event of annexations of territory into another jurisdiction, the service areas will be decreased accordingly. The service areas provide a nexus between those paying the fees and benefits received to ensure that those developments paying impact fees receive substantial benefits. The service area maps are attached to this Ord. No. 95-16 as attachment A and incorporated by reference. The service areas are also delineated on maps on file with the County.

(Ord. No. 95-16, § XI-1-1 (K), 12-5-95)

Sec. 46-12. Presumption of maximum impact.

New development shall be presumed to have maximum impact on the necessary park, open space, fire/EMS, roadway and drainage facilities at the level of service established by this chapter.

(Ord. No. 95-16, § XI-1-1 (L), 12-5-95)

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Sec. 46-13. Imposition

1. Any person who, after January 1, 1996, engages in new development shall pay impact fees in the manner and in the amounts required in this chapter, unless otherwise specified in this section. No building permit shall be issued for new development within the County unless the impact fees are assessed and collected pursuant to this chapter.
2. Payment of impact fees specified in this section shall constitute full and complete payment of the project's proportionate share of system improvements for which such fee was paid and shall constitute compliance with the requirements of this chapter.
3. Notwithstanding any other provision of this chapter, applications for building permits which have been filed and deemed complete by the County prior to January 1, 1996, shall not be subject to impact fees established pursuant to section 46-15. Notwithstanding this exemption, such projects shall be subject to any and all fees applicable prior to the effective date, whether assessed and paid prior to or subsequent to January 1, 1996.
4. Nothing in this chapter shall prevent the County from requiring a developer to construct reasonable project improvements in connection with the new development.
5. Nothing in this chapter shall prevent the County from requiring a developer to construct reasonable system improvements necessitated by and attributable to the new development as a condition of development approval or pursuant to a development agreement with the County, provided that services are not available from existing facilities with actual capacity to serve the new development and provided that the County grants applicable credits to the developer for such system improvements.
6. Nothing in this chapter shall abrogate the County's authority to require the applicant to prepare necessary studies, analyses or reports required as a part of the development approval process.
7. Nothing in this chapter shall prevent the County from rejecting an application for development if it determines that such development is inconsistent with adopted County plans, regulations or ordinances.
8. The impact fees established pursuant to this chapter shall be phased in the following manner:
 - (a) Until January 1, 2008, impact fees shall be assessed at the rates approved in 2002.
 - (b) Beginning January 1, 2008 the Impact Fee multiplier shall be (.4).
 - (c) Beginning January 1, 2009 the Impact Fee multiplier shall be (.8).

Ord. No. 95-16, § XI-1-1(M), 12-5-95)

State law reference(s)--Fee authorized, NMSA 1978, § 5-8-3.

Sec. 46-14. Assessment and collection.

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1. The impact fees administrator or his designee shall calculate and assess the impact fees at the earliest possible time.
 - (a) For land that is platted or replatted on or after January 1, 1996, the impact fees shall be assessed for new development no later than at the time that the subdivision plat is recorded.
 - (b) For land that was platted or replatted prior to the effective date or for development that occurs on existing lots of record, the impact fees shall be assessed at the time of development approval, plan check or issuance of a building permit.
 - (c) All impact fee assessments made on or after the effective date shall equal 100 percent of the fee amounts listed in section 46-15.
2. The assessment of impact fees shall be in writing and shall be valid for a period of at least four years.
3. Notwithstanding subsection (b) of this section, the assessment of impact fees may be revised if the number of service units in the specific development increases, provided that such revision shall be limited to the impact fees for the additional service units.
4. The impact fees administrator, or his designee, shall calculate and assess the drainage impact fees as indicated in this subsection. These procedures are applicable only for calculating and assessing drainage impact fees. New development must also comply with the design requirements of article III of chapter 38 of this Code.
 - (a) Calculate the current percentage of the site acreage contained in one or more of the following land treatment categories:

Land Treatment	Land Condition
A	Soil uncompacted by human activity with zero to ten percent slopes. Native grasses, weeds and shrubs in typical densities with minimal disturbance to grading, groundcover and infiltration capacity. Croplands. Unlined arroyos.
B	Irrigated lawns, parks and golf courses with zero to ten percent slopes. Native grasses, weeds and shrubs, and soil uncompacted by human activity with slopes greater than ten percent and less than 20 percent.
C	Soil compacted by human activity. Minimal vegetation. Unpaved parking, roads, trails. Most vacant lots. Gravel or rock on plastic (desert landscaping). Irrigated lawns and parks with slopes greater than ten percent. Native grasses, weeds and shrubs, and soil uncompacted by human activity with slopes at 20 percent or greater. Native grass, weed and shrub areas with clay or clay loam soils and other soils of very low permeability as classified by SCS Hydrologic Soil Group

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D Impervious areas, pavement and roofs.

(b) In lieu of a specific measurement for the site acreage contained in land treatment D, the following factors may be utilized:

Land Use	Percent D
Commercial	90
Single-family residential (includes local streets) (N = units/acre, N < 6)	$7(N^2 + 5N)^{1/2}$
Multiple unit residential	60
Detached (including local streets)	70
Attached (including local streets)	
Industrial	70
Light (including local streets)	80
Heavy (including local streets)	
Parks, cemeteries	7
Playgrounds	13
Schools	50
Collector and arterial streets	90

(c) Multiply the acreage within each land treatment category by the appropriate runoff coefficient.

Precipitation Zone

West of river	0.27	0.43	0.61	0.93
River to San Mateo	0.31	0.45	0.62	0.93
San Mateo to Eubank / range 4E	0.35	0.48	0.64	0.93
East of Eubank / range 4E	0.39	0.52	0.66	0.94

d. Add the resulting figures to determine the number of predevelopment service units;

e. Determine the proposed area of site acreage that will occur in each land treatment category as a result of new development;

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- 1
- 2
- 3 f. Multiply each area from subsection (d)(5) of this section by the appropriate runoff coefficient;
- 4
- 5
- 6 g. Add the resulting figures to determine the number of post-development service units;
- 7
- 8
- 9 h. Subtract the predevelopment service units from the post-development service units to determine
- 10 the net increase in service units; and
- 11
- 12 i. Multiply the net increase in service units by the impact fee for the appropriate service area.
- 13
- 14 5. The impact fees administrator, or his designee, shall calculate and assess all other impact fees
- 15 as follows:
- 16
- 17 (a) Determine the applicable service area;
- 18
- 19
- 20 (b) Determine the applicable land use category;
- 21
- 22
- 23 (c) Verify the number of dwelling units or the amount of gross floor area (whichever is
- 24 applicable) in the development; and
- 25
- 26
- 27 (d) Multiply the number of dwelling units or the amount of gross floor area, whichever is
- 28 applicable, by the applicable impact fees from the table in section 46-15.
- 29
- 30 6. If the assessment occurs at the time of subdivision plat or site plan approval, the assessment
- 31 may be based on the applicable fee schedule.
- 32
- 33 7. If an application proposes a use that does not directly match an existing land use category upon
- 34 which fees are based, the impact fees administrator shall assign the proposed use to the existing
- 35 land use category that most closely resembles the proposed use.
- 36
- 37 8. When new development for which an application for a building permit has been made includes
- 38 two or more buildings, structures or other land uses in any combination, including two or more
- 39 uses within a building or structure, the total impact fee assessment shall be the sum of the fees
- 40 for each and every building, structure, or use, including each and every use within a building or
- 41 structure.
- 42
- 43 9. When a change of use, plat or replat, redevelopment or modification of an existing use or building
- 44 requires the issuance of a building permit, the impact fee shall be based on the difference
- 45 between the impact fee calculated for the previous use and the impact fee calculated for the
- 46 proposed use. Should a redevelopment or modification of an existing use or building that requires
- 47 the issuance of a building permit but does not involve a change in use result in a net increase in
- 48 gross floor area, the impact fee shall be based on the net increase, if the service units are

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calculated on gross floor area. Should a change of use, redevelopment or modification of an existing use or building result in a net decrease in gross floor area or calculated impact fee, no refund or credit for past impact fees paid shall be made or created.

10. In addition to the cost of new or expanded system improvements needed to serve new development, the impact fee shall also include the proportionate cost of existing system improvements, but only to the extent that such public facilities have excess capacity and new development as well as existing development will be served by such facilities.

11. The impact fees administrator shall retain a record of the impact fees assessment. A copy shall be provided to the applicant on the forms prescribed by the County. A notice of impact fees assessment for the site shall be recorded in the appropriate real property title records of the County clerk.

12. The impact fees shall be due and payable at the time of issuance of a building permit. Impact fees for mobile homes shall be collected at the time of issuance of a building permit or issuance of a certificate of occupancy.

(Ord. No. 95-16, § XI-1-1(N), 12-5-95)

State law reference(s)--Time for assessment and collection of fee, NMSA 1978, § 5-8-8.

Sec. 46-15. Schedule.

The following impact fees are hereby imposed upon all new development in the County:

Park Impact Fees

<i>Land Use Category</i>	<i>East Mountain Service Area</i>	<i>Northeast Service Area</i>	<i>Northwest Service Area</i>	<i>South Service Area</i>
Single-family* dwelling unit	<u>\$2,620.00</u>	<u>\$2,620.00</u>	<u>\$2,620.00</u>	<u>\$2,620.00</u>
Multifamily dwelling unit	<u>\$1,790.00</u>	<u>\$1,790.00</u>	<u>\$1,790.00</u>	<u>\$1,790.00</u>
*Includes mobile homes				

Fire/EMS Impact Fees

<i>Land Use Type</i>	<i>Unit</i>	<i>Impact Fee/Unit</i>
Single-family*	Dwelling	<u>\$883.00</u>
Multifamily	Dwelling	<u>\$620.00</u>
Mobile home	<u>Dwelling</u>	<u>\$461.00</u>
-	-	
Commercial	1.0 square foot GFA**	\$0.84
Office/Institution	1.0 square foot GFA**	<u>\$0.67</u>
Storage	1.0 square foot GFA**	<u>\$0.12</u>
Industrial	1.0 square foot GFA**	<u>\$0.73</u>

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**Gross Floor Area
Fire/EMS impact fees may not be waived for affordable housing under any of the sections listed in this chapter.

Open Space Impact Fees

<i>Land Use Category</i>	<i>Unit</i>	<i>Impact</i>
<i>Fee/Unit</i>		
Single-family*	Dwelling	<u>\$293.22</u>
Multifamily	Dwelling	<u>\$200.30</u>

includes mobile homes, applicable Countywide.

Bernalillo County Road Impact Fee Schedule

<i>Land Use</i>	<i>Unit</i>	<i>Impact fee/unit</i>
<u>Residential</u>		
Single-Family Detached	Dwelling	\$3,273
Apartment	Dwelling	\$2,298
Condominium/Townhouse	Dwelling	\$2,004
Mobile Home	Dwelling	\$1,707
Senior Adult Housing Detached	Dwelling	\$1,269
Senior Adult Housing Attached	Dwelling	\$1,190
Others not specified	Dwelling	\$1,886
<u>Office</u>		
General Office Building	1000 GFA	\$3,765
Business Park	1000 GFA	\$4,364
Others not specified	1000 GFA	\$4,065
<u>Commercial/Retail</u>		
Shopping Center	1000 GFA	\$2,822
Quality Restaurant	1000 GFA	\$4,113
Fast Food Restaurant	1000 GFA	\$14,746
High Turnover Restaurant	1000 GFA	\$5,782
Supermarket	1000 GFA	\$5,870
Convenience Market	1000 GFA	\$9,029
Convenience Market with gasoline pumps	Fueling position	\$10,130
Gasoline Service Station	Fueling position	\$1,498

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<u>Bank</u>	1000 GFA	\$7,350
<u>Hotel/Motel</u>	Room	\$1,187
<u>All Suites Hotel</u>	Room	\$1,536
<u>Others not specified</u>	1000 GFA	\$1,984
<u>Industrial</u>		
<u>General Light Industrial</u>	1000 GFA	\$2,384
<u>Industrial Park</u>	1000 GFA	\$2,380
<u>Warehouse</u>	1000 GFA	\$1,696
<u>Mini-Warehouse</u>	1000 GFA	\$855
<u>High-Cube Warehouse</u>	Employee	\$266
<u>Manufacturing</u>	1000 GFA	\$728
<u>Others not specified</u>	1000 GFA	\$1,609
<u>Institutional</u>		
<u>Elementary School</u>	Student	\$154
<u>Mid-School</u>	Student	\$246
<u>High School</u>	Student	\$243
<u>Junior/Community College</u>	Student	\$318
<u>College</u>	Student	\$694
<u>Day Care Center</u>	Student	\$855
<u>Hospital</u>	Bed	\$1,026
<u>Nursing Home</u>	Bed	\$684
<u>Church/Synagogue</u>	1000 GFA	\$746
<u>Others not specified</u>	1000 GFA	\$742
<u>Terminal Uses</u>		
<u>General Aviation Airport</u>	Employee	\$4,870
<u>Truck Terminal</u>	Employee	\$2,391
<u>Others not specified</u>	Employee	\$3,632

Drainage Impact Fees

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Service Area	East Mesa	Valley	Mesa del Sol
Net cost per service unit	<u>\$16,463.00</u>	<u>\$15,507.00</u>	<u>\$16,463.00</u>
Service Area	SW Mesa	NW Basalt	NW Other
Net cost per service unit	<u>\$16,463.00</u>	<u>\$23,966.00</u>	<u>\$16,463.00</u>

(Ord. No. 95-16, § XI-1-1 (O), 12-5-95)

Sec. 46-16. Use of fees collected.

1. Aside from impact fees collected for recoupment, the funds collected pursuant to this chapter shall be used solely for the purpose of planning, design, land acquisition, construction, expansion and development of system improvements within the service area from which the impact fees were collected. The County roadway impact fee will be used to implement the facilities specifically identified in the IFCIP and for any action(s) that increases the vehicle miles of capacity on the Impact Fee Roadway System. Actions that may be considered under this provision include the addition of basic lane miles, the addition of two way left turn lanes, acceleration and deceleration lanes, the addition of turn or through lanes at intersections, intersection signalization, or signal enhancements. For any one of these eligible activities the actual increase in vehicle miles of capacity that results from the improvements must be quantified and clearly demonstrated based on accepted capacity calculation methodologies. Impact fees may only be used in these cases to cover the cost of the added capacity (in service units).
2. Recoupment impact fees may be spent to offset the impact fees otherwise due from new development for which a waiver of impact fees has been granted or for any other lawful County purpose. Capital facility expenditures of non impact fee funds designated by the County for projects benefiting new development may be used to offset the impact fees otherwise due from new development for which the County has granted a waiver of impact fees.
3. The County shall be entitled to expend up to three percent of the impact fees collected annually to offset the permissible administrative costs associated with the collection and use of such funds.
4. The County may issue bonds, revenue certificates and other obligations of indebtedness in such manner and subject to such limitations as may be provided by law in furtherance of the provision of capital improvement projects. Funds pledged toward retirement of bonds, revenue certificates or other obligations of indebtedness for such projects may include impact fees and other County revenues as may be allocated by the Board of County Commissioners. The non recoupment impact fees paid pursuant to this chapter, however, shall be restricted to use solely and exclusively for financing directly, or as a pledge against bonds, revenue certificates and other obligations of indebtedness for the cost of capital improvements or facility expansions as specified in this section.

(Ord. No. 95-16, § XI-1-1 (P), 12-5-95)

Sec. 46-17. Waivers

Impact fees imposed pursuant to this chapter shall be waived for the following types of new development:

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- (1) Any addition or expansion to a building which does not increase the number of service units in the building.
- (2) Any accessory building for a subordinate or incidental use to a dwelling unit on residential property, which building does not constitute a dwelling unit.
- (3) Any reconstruction of a destroyed or partially destroyed building, provided that the destruction of the building occurred other than by willful razing or demolition. The waiver only applies to the replacement of the previous facility. A change of land use or increase in dwelling units shall be addressed through section 46-14(i).

Fire/EMS impact fees may not be waived for affordable housing.

(4) Any dwelling unit that meets the definition in this chapter of affordable housing, provided that any applicant claiming this waiver documents that the dwelling unit for which the waiver is requested will comply with the definition in this chapter of affordable housing. No more than 40 percent of the units in any phase of any development project may qualify for this waiver. All units must meet all current code requirements.

Any development project that meets the definition in this ordinance of economic base development, provided that any applicant claiming this waiver documents that:

(5) The business that will be located on the property has a business plan that demonstrates the business's ability to comply with the requirements of the definition of economic base development for a period of at least three years and is approved by the Board of County Commissioners.

Application

(6) An applicant for the waiver of impact fees shall have the burden of claiming and proving that a development project qualifies for any of the waivers listed in this section prior to the issuance of a building permit. Such waiver shall be granted or denied in writing by the impact fees administrator or his designee, subject to appeal pursuant to section 46-22.

(7) An application for a waiver shall be made on forms provided by the County. An application not filed before the issuance of a building permit shall be deemed waived.

(8) The County shall utilize funds from a revenue source other than non recoupment impact fees to offset the impact fee revenue lost as a result of waivers granted for affordable housing or economic base development and applications for these waivers may be denied if funds are not available for this purpose.

(9) The County may adopt administrative procedures and guidelines to implement waivers granted pursuant to this section.

(Ord. No. 95-16, § XI-1-1 (Q), 12-5-95)

Sec. 46-18. Independent fee determination.

An independent determination of impact fees may be made as follows:

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- (1) Short form application: to be completed by owner's agent for staff review. or;
- (2) An applicant for development approval may elect to have an independent determination of the impact fees due for their development project in accordance with this section. Any applicant who makes this election shall prepare and submit to the impact fees administrator an independent fee study for the development project for which development approval is sought.
- (3) All independent fee studies shall be prepared for review and submitted to the impact fees administrator no later than the time of application for a building permit. Any submission not so made shall be deemed waived.
- (4) Each independent fee study shall comply in all respects with the requirements of this chapter and be organized in a manner that will allow the impact fees administrator to readily ascertain such compliance.
- (5) Each independent fee study shall comply with all other written specifications as may be required by the impact fees administrator from time to time.
- (6) The impact fees administrator shall determine the appropriate impact fees based on the results of the independent fee study and the applicable impact fee schedule established in section 46-15.
- (7) Any impact fee calculated in accordance with this section and approved and certified in writing by the impact fees administrator shall be valid for four years following the certification. Following such period, a new application for an independent fee study must be made. Any change in the submitted development plan that in any material way effects said fee calculation shall void the certification of the fee.
- (8) Development projects served by drainage facilities owned and operated by AMAFCA shall be eligible for independent fee determinations of drainage impact fees. In such determinations, if it can be demonstrated by a drainage study acceptable to the County that some or all of the peak discharge from a development project in excess of 50 cubic feet per second (cfs) is collected, diverted or conveyed by AMAFCA facilities that are located within the same drainage basin as is the development project, the drainage impact fee that would otherwise be imposed pursuant to this chapter shall be reduced by a percentage equal to that percentage of the peak discharge from the development project in excess of 50 cubic feet per second (cfs) which is collected, diverted or conveyed by AMAFCA facilities that are located within the same drainage basin as is the development project. (Example: If 25 percent of the peak discharge from a development project in excess of 50 cubic feet per second is collected, diverted or conveyed by AMAFCA facilities that are located within the same drainage basin as is the development project, then the development project's drainage impact fee shall be reduced by 25 percent.)
- (9) An independent determination of impact fees will be required under the following conditions:

A development is proposed that will exceed the population or employment forecasts (for the data analysis subzone(s) in which the proposed development is located) in the adopted land use assumptions. In these cases an independent fee determination will be required for all infrastructure

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categories and the County may establish a separate service area, establish appropriate impact fees and add facilities as necessary to the IFCIP. The proposed fees, service area, and additions to the IFCIP will be included in a development agreement which shall be approved by the Bernalillo County Commission.

Ord. No. 95-16, § XI-1-1(R), 12-5-95)

Sec. 46-19. Administration of the fees.

- (1) *Collection of impact fees by the impact fees administrator or his designee.* The impact fees administrator or his designee shall be responsible for collection of the impact fees. Upon receipt of impact fees, the impact fees administrator or his designee shall place such funds into separate accounts as specified in this chapter. All such funds shall be deposited in interest-bearing accounts in a bank authorized to receive deposits of County funds. Interest earned by each account shall be credited to that account and shall be used solely for the purposes specified for funds of such account.
- (2) *Establishment and maintenance of records.* The impact fees administrator or his designee shall establish and maintain accurate financial records for the impact fees collected pursuant to this chapter which shall clearly identify for each impact fee payment the payor of the impact fee, the specific development project for which the fee was paid, the date of receipt of the impact fee, the amount received, the category of capital improvement for which the fee was collected, and the applicable service area. The financial records shall show the disbursement of all impact fees, including the date and purpose of each disbursement.
- (3) *Annual reports.* The impact fees administrator or his designee shall prepare and present to the Board of County Commissioners an annual report describing the amount of any impact fees collected, encumbered and used during the preceding year by category of capital improvement and service area.
- (4) *Public inspection.* The records of the accounts shall be available for public inspection and copying at the County during ordinary County business hours.
- (5) *Expenses of administration.* An amount not to exceed three percent of the total of all impact fees collected may be allocated and applied for administration of this chapter for County employees who are qualified professionals.

(Ord. No. 95-16, § XI-1-1(S), 12-5-95)

Sec. 46-20. Refunds.

1. The current owner of record of property on which an impact fee has been paid shall be entitled to a refund of such fee if:
 - (a) The current owner of record of the property submits an application for refund within one year of the event, giving rise to the right to claim a refund.
 - (b) All or a portion of the impact fees paid by the development are not spent within seven years after the date of payment. The determination of whether the impact fees paid by a development have been spent shall be determined using a first in, first out accounting

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standard if a portion of the impact fees paid by the development are not spent within seven years after the date of payment.

(c) Existing County facilities of the type for which the impact fees have been paid are available to provide service to the development, but service from such facilities is not provided by the County.

(d) Existing County facilities of the type for which the impact fees have been paid are not available to the development, and the construction of improvements that would serve the development are not completed and available to provide service to the development within seven years from the date of payment of the impact fees.

2. An application for refund must be submitted to the impact fees administrator or his designee on a form provided by the County for such purpose and must contain information and documentation sufficient to permit the impact fees administrator to determine whether the refund claimed is proper and, if so, the amount of such refund. A refund not applied for within the time period specified or not submitted in the manner specified shall be deemed deferred.
3. In no event shall an applicant be entitled to a refund for impact fees assessed and paid to recover the costs of excess capacity in existing system improvements.
4. Within 30 days from the date of receipt of an application for refund, the impact fees administrator or his designee must provide the applicant, in writing, with a decision on the refund request including the reasons for the decision. If a refund is due the applicant, the County shall issue a refund payment to the applicant within 30 days of the impact fees administrator's written decision on the refund request.
5. The applicant may appeal the determination of the impact fees administrator within 30 days of such determination, as provided in section 46-22.
6. A refund shall bear interest calculated from the date of collection of the impact fee to the date of refund at the statutory rate as set forth in NMSA 1978, § 56-8-3.

(Ord. No. 95-16, § XI-1-1(T), 12-5-95)

State law reference(s)--Refunds, NMSA 1978, § 6-8-17.

Sec. 46-21. Credits.

The County shall grant credit against impact fees using the same impact multiplier percent rate as adopted by the Board of County Commissioners.

The County shall grant credit against impact fees imposed pursuant to this chapter under the following circumstances:

- (1) Credits shall be granted only for the value of any construction of improvements or contribution or dedication of land, easements or money for system improvements or system studies made by a developer or his predecessor in title or interest as a condition of development approval or pursuant to a development agreement with the County, or for payments made or to be made pursuant to the terms of any special assessment district.

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- 1 (2) Credits shall only be granted for system improvements or system studies for the same category
2 of system improvements and within the same service areas for which impact fees are imposed
3 pursuant to this chapter. For the County roadway impact fee, credits shall be granted for
4 improvements that are specifically identified in the IFCIP or for any permissible action(s) that
5 increases the vehicle miles of capacity on the Impact Fee Roadway System. Actions that may be
6 considered under this provision include the addition of transit bays, pedestrian and bicycle
7 facilities. For anyone of these eligible activities the actual increase in vehicle miles of capacity
8 that results from the improvements must be quantified and clearly demonstrated based on
9 accepted capacity calculation methodologies.
- 10 (3) Credits shall only be granted for contributions, dedications or improvements accepted by the
11 County. cash contributions shall be deemed accepted when payment is received and accepted
12 by the County. Land or easements shall be deemed accepted when conveyed or dedicated to
13 and accepted by the County. Improvements shall be deemed accepted when:
14
- 15 (a) The construction of the creditable improvement is complete and accepted by the County;
16
17 (b) A suitable maintenance and warranty bond or letter of credit is received and approved by the County;
18 and
19
20 (c) All design, construction, testing, bonding and acceptance procedures are verified by the County to be
21 in strict compliance with the current County standards.
22
- 23 (4) Notwithstanding subsection (3) of this section, the County may by agreement grant credits for
24 system improvements which have not been completed if the applicant for such credits provides
25 the County with acceptable security to ensure completion of the system improvements in the
26 form of a performance bond, irrevocable letter of credit, or escrow agreement or other form of
27 security payable to or for the benefit of the County in an amount determined by the impact fees
28 administrator to be equal to 120 percent of the estimated completion cost of the system
29 improvements, including land acquisition costs and planning and design costs. The value of
30 such system improvements for computing credits shall be their estimated completion cost, based
31 on documentation acceptable to the County.
- 32 (5) No credits shall be granted for:
33
- 34 (a) System improvements that fail to meet applicable County standards;
35
36 (b) Project improvements;
37
38 (c) The construction of local on-site facilities required by zoning, subdivision, or other County regulation
39 intended to serve only a particular development;
40
41 (d) System improvements made in excess of the level of service established in this chapter unless such
42 system improvements are required as a condition of development approval; or
43
44 (e) Any study, analysis or report, or portion thereof, required by the County to determine the project
45 improvements for a development project.
46
- 47 (6) Development agreements for system improvements may be negotiated and entered into
48 between the County and a developer, subject to the following requirements:

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- (a) A developer may offer to construct, contribute, dedicate or pay the cost of a capital improvement included within the categories of capital improvements listed in the IFCIP
- (b) The County may accept such offer on terms satisfactory to the County;
- (c) The terms of the agreement shall be memorialized in a written agreement between the County and the developer prior to the issuance of a building permit
- (d) The agreement shall establish the estimated value of the system improvements, the schedule for initiation and completion of the system improvements, a requirement that the system improvements be completed to accepted County standards, and such other terms and conditions as deemed necessary by the County; and
- (e) The County must review the system improvements plan, verify costs and time schedules, determine if the system improvements are eligible system improvements, determine if the completed improvement meets applicable County standards, calculate the applicable impact fees otherwise due, determine the amount of the credits for such system improvements to be applied to the otherwise applicable impact fees, and determine if excess credits are created.
 - (7) Pre-ordinance credit. Credit shall be granted for the value of any construction of improvements or contribution or dedication of land, easements or money for system improvements accepted by the County as a condition of development approval, or for payments made or to be made pursuant to the terms of any special assessment district, on or after January 1, 1980, and prior to the effective date. The impact fees administrator shall deduct from the value of the pre-ordinance credit the value of the impact fee that would have been charged had this chapter been in effect on the date that the building permits for the development were issued.
 - (8) Credits for system improvements shall be applied for as follows:
 - (a) Pre-ordinance credits shall be applied for within one year from the effective date on forms provided by the County. Pre-ordinance credits not applied for within such time period shall be deemed waived.
 - (b) Post-ordinance credits shall be applied for no later than the time of application for a building permit on forms provided by the County. Post-ordinance credits not applied for within such time period shall be deemed waived.
 - (c) Credits created pursuant to a development agreement with the County entered into between the County and a developer from and after the effective date shall be applied for no later than the time the development agreement is approved by the County.
 - (9) The value of credits and the calculation of excess credits shall be determined by the impact fees administrator, in writing, subject to appeal pursuant to section 46-22
 - (10) The value of credits for system improvements shall be computed as follows:
 - (a) The value of cash contributions shall be based on the face value of the cash payment at the time of payment to the County;
 - (b) The value of unimproved land or easements shall, at the option of the applicant, be:

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- (1) The fair market value of the land or easement prior to any increase in value resulting from development approval demonstrated by an appraisal prepared by an appraiser acceptable to the County;
 - (2) The acquisition cost of the land or easement to the developer or his predecessor in title or interest demonstrated by documentation acceptable to the County; or
 - (3) The total unit costs of the land or easement calculated using the IFCIP table of facility unit costs in effect at the time impact fees are assessed on the development project, or, if no fees have been assessed, at the time the credits are applied for.
- (c) The value of system improvements shall, at the option of the applicant, be:
- (1) The fair market value of the completed system improvement at the time of acceptance by the County demonstrated by an appraisal prepared by an appraiser acceptable to the County;
 - (2) The actual construction cost of the completed system improvement, including planning and design costs, demonstrated by documentation acceptable to the County; or
 - (3) The total unit costs of the completed improvement calculated using the IFCIP table of facility unit costs in effect at the time impact fees are assessed on the development project or, if no impact fees have been assessed, at the time the credits are applied for.
- (d) The value of system studies shall be the cost of the study demonstrated by documentation acceptable to the County.
- (e) An applicant for credits shall be responsible for providing at his own expense the appraisals, construction and acquisition cost documentation and other documentation necessary for the valuation of credits by the impact fees administrator. The County shall not be obligated to grant credits to any applicant who cannot provide such documentation in such form as the impact fees administrator may require.
- (f) In lieu of the appraisals referred to in subsections (10)b.1 and (10)c.1 of this section, the impact fees administrator may accept an appraisal prepared by an appraiser acceptable to the County that demonstrates the combined fair market value of land, easements or completed improvements at the time of acceptance by the County, less the increase in land value resulting from development approval.
- (g) The impact fees administrator may accept an appraisal that was prepared contemporaneously with the original contribution, dedication or construction of a system improvement if he determines that such appraisal is reasonably applicable to the computation of the credit due.
- (h) The impact fees administrator retains the right to obtain, at the County's expense, additional engineering and construction cost estimates and/or property appraisals that may, at the impact fees administrator's option, be used to determine the value of credit.
- (11) Credits granted for system improvements and system studies shall be applied as follows:

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- 1
- 2 (a) Credits shall be applied first to offset the impact fees otherwise due for the development project for
- 3 which the credit was granted. If the value of the credit exceeds the impact fees otherwise due, the
- 4 excess credits shall become the property of the applicant, subject to the requirements of this chapter.
- 5
- 6 (b) Credits shall only be applied to offset impact fees for the same category of system improvements,
- 7 within the same service area for which the credit was granted. Credits shall not be used to offset
- 8 impact fees for other categories of system improvements or for other service areas.
- 9
- 10 (c) If an applicant is entitled to excess credits, the impact fees administrator shall issue a certificate of
- 11 excess credit to the applicant which denotes the dollar amount of the excess credit, the category of
- 12 system improvement and service area to which the excess credit may be applied, the name of the
- 13 applicant as the original credit-holder and a description of the development project for which the credit
- 14 was granted. The certificate of excess credit shall be signed by both the impact fees administrator
- 15 and the credit-holder. The impact fees administrator shall retain a copy of the certificate of excess
- 16 credit and the credit-holder shall be given the original certificate.
- 17
- 18 (d) Excess credits shall be freely transferable in accordance with the provisions of this chapter.
- 19
- 20 (e) The credit-holder of excess credits may do any of the following:
- 21
- 22 (1) Apply all or part of the excess credits to offset impact fees due for new development for the same
- 23 category of system improvements within the same service area for which the credit was granted;
- 24
- 25
- 26 (2) Transfer all or part of the certificate of excess credits to another person who shall become the credit-
- 27 holder upon written notice to the impact fees administrator, subject to the same rights and restrictions
- 28 as the original credit-holder, in addition to additional restrictions that apply to transferred excess
- 29 credits; and/or
- 30
- 31 (3) Request reimbursement from the County for all or part of the amount of the excess credits from
- 32 revenue generated by impact fees paid by new development for system improvements within the
- 33 same service category and service area for which the credit was granted.
- 34
- 35 (f) Excess credits shall be subject to the following restrictions:
- 36
- 37 (1) Excess credits shall not accrue interest and shall not be considered public money, public funds or
- 38 public credit within the meaning of any law or ordinance relating to public money, public funds or
- 39 public credit.
- 40
- 41 (2) Excess credits shall not be reimbursed from the County's general fund or from any other County
- 42 funding source other than impact fees paid by new development for system improvements within the
- 43 same service category and service area for which the credit was granted.
- 44
- 45 (3) The County shall, upon request from the credit-holder of excess credits, after acceptance by the
- 46 County of the project creating credits, provide reimbursements for excess credits on a first in, first out
- 47 basis and shall not be obligated to provide reimbursements in the event there is no unencumbered

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account balance in the County's impact fee account for the appropriate service category and service area.

- (4) Except as otherwise provided in this chapter, excess credits shall not constitute a liability of the County, and the County shall not be obligated to reimburse excess credits.
- (5) Excess credits transferred from the original credit-holder may be applied to offset only up to 50 percent of the impact fees otherwise due from new development for system improvements within the same service category and service area for which the credit was granted.
- (6) The County shall grant credit against drainage impact fees imposed pursuant to this chapter for the value of any construction of improvements or contribution or dedication of land, easements or money for system improvements or system studies made by a developer or his predecessor in title or interest as a condition of development approval or pursuant to a development agreement with the County for drainage improvements which are, or upon completion will be, owned and operated by AMAFCA. These credits shall be applied for, granted, valued and applied in the same manner as other credits provided for in this chapter, subject to the following additional restrictions:
 - (a) These credits shall only be granted for drainage system improvements which are, or upon completion will be, owned and operated by AMAFCA;
 - (b) Credit-holders of these credits may not request reimbursement from the County for some or all of these credits from revenue generated by impact fees paid by other new development; and
 - (c) These credits may only be applied to offset drainage impact fees for new development in the same service area which uses AMAFCA facilities.

(Ord. No. 95-16, § XI-1-1 (U), 12-5-95)

State law reference(s)--Credits, NMSA 1978, § 5-8-15.

Sec. 46-22. Administrative appeals.

- (1.) Notice of appeal; filing; fee. An applicant who chooses to appeal the assessment or calculation of impact fees; an independent fee determination; determination of waivers, credits, excess credits; or other decision of the impact fees administrator shall submit a notice of appeal and payment of a nonrefundable processing fee to the impact fees administrator or his designee within 30 days following the date of the decision or determination of the impact fees administrator giving rise to the appeal. [The fee for processing an administrative appeal is \\$150.00](#)
- (2.) Bond. If the notice of appeal is accompanied by a bond or other sufficient surety satisfactory to the County attorney, in an amount equal to the impact fee assessed, the County building official or his duly designated agent shall issue the building permit.
- (3.) Staying of impact fee collection; requirement. The filing of a notice of appeal shall not stay the collection of the impact fee unless a bond or other sufficient surety has been filed.
- (4.) Action by board of appeals. Appeals shall be considered by the board of adjustment in accordance with the rules and regulations of that administrative body. Upon hearing of such appeals, the board of adjustment may affirm, change or modify the decision of the impact fees administrator or, in lieu

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thereof, make such other or additional determination as it deems proper. The decision of the board of adjustment upon the appeal shall be in writing, concurred in by a majority of the members present, which shall forthwith transmit a copy of the decision to the applicant and to the impact fees administrator.

(5.) Appeal of board of adjustment's decision. Either the applicant or the impact fees administrator may appeal the decision of the board of adjustment to the Board of County Commissioners within 30 days following the decision of the board of adjustment.

(6.) Final decision by Board of County Commissioners. The Board of County Commissioners shall consider the appeal in accordance with the rules and regulations of that governing body. The decision of the Board of County Commissioners shall, in all instances, be the final administrative decision and shall be subject to judicial review in accordance with applicable law.

(Ord. No. 95-16, § XI-1-1(V), 12-5-95)

Sec. 46-23. Effect of fee on zoning and subdivision regulations.

This chapter shall not affect, in any manner, the permissible use of property, density of development, design and improvement standards and requirements, or any other aspect of the development of land or provision of capital improvements subject to the zoning and subdivision regulations of the County, which shall be operative and remain in full force and effect without limitation with respect to all such development.

(Ord. No. 95-16, § XI-1-1(Y), 12-5-95)

Sec. 46-24.

Fee as additional and supplemental requirement.

The impact fee is additional and supplemental to, and not in substitution of, any other requirements imposed by the County on the development of land or the issuance of building permits. It is intended to be consistent with and to further the objectives and policies of the comprehensive plan, the CIP-P and other County policies, ordinances and resolutions by which the County seeks to ensure the provision of public facilities in conjunction with the development of land.

(Ord. No. 95-16, § XI-1-1(Z), 12-5-95)

Sec. 46-25. Review and amendment.

The advisory committee shall review, update and propose any amendments to the land use assumptions, CIP-P and the impact fees at least every five years from the effective date. The advisory committee shall be consulted during such review and file its written comments concerning any amendments with the Board of County Commissioners. The Board of County Commissioners shall take action on any proposed amendments consistent with the provisions of the Development Fees Act.

(Ord. No. 95-16, § XI-1-1(AA), 12-5-95)

State law reference(s)--Review and amendment, NMSA 1978, § 5-8-30 et seq.

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DONE this 28th day of August, 2007.

APPROVED AS TO FORM

BOARD OF COUNTY COMMISSIONERS

County Attorney

Alan B. Armijo, Chair

E. Tim Cummins, Vice Chair

ATTEST

Teresa L. Córdova PhD, Member

Deanna Archuleta, Member

Maggie Toulouse, County Clerk

Michael Brasher, Member